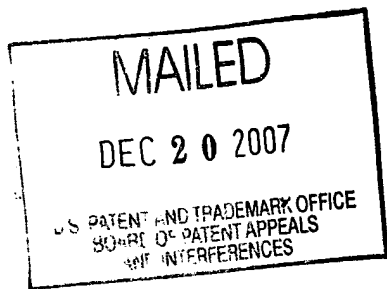


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER A. GOODE, ANDREW GOULD,
ALAN CHRISTIE and CHARLES E. VISE, JR.

Application 09/920,895

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on December 10, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

A review of the file indicates the Appeal Brief filed October 17, 2005 as defective. The copy of the appealed claims contained in the Appendix to the brief is not correct, since it did not list Claim 13 and has added Claim 49. The Status of Claims contained in the brief states "Claims 10-13, 25, 26, 28, 29, 44-48, 50 and 51 have been finally rejected and are the subject of this appeal". Clarification and

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correction of the record is required.

The Appeal Brief filed October 17, 2005 is also missing the following required sections:

“EVIDENCE APPENDIX” as set forth in 37 CFR § 41.37(c)(1)(ix)

“RELATED PROCEEDINGS APPENDIX,” as set forth in 37 CFR § 41.37(c)(1)(x)

Also, the Examiner’s Answer mailed February 14, 2006, states under the Evidence Relied Upon section, page 3, that “No evidence is relied upon by the examiner in the rejection of the claims under appeal.” A review of the file reveals that prior art was applied to the Rejections on appeal. See the Grounds of rejection on page 3 of the Examiner’s Answer. The Manual of Patent Examining Procedure, (MPEP), in §1207.02 states:

(8) *Evidence Relied Upon*. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Before further review, the examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the statement of rejections.

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Further, Information Disclosure Statements (IDS) were filed on September 30, 2002 and July 10, 2006. It is not apparent from the record that the examiner considered the statements submitted or notified applicants of why their submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98.

Accordingly, it is

ORDERED that the application is electronically returned to the

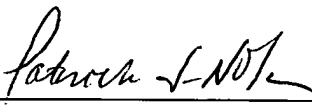
Examiner to:

- 1) hold the Appeal Brief filed on October 17, 2005, defective;
- 2) notify appellant to file a Supplemental Appeal Brief for the “Claims Appendix” as set forth in 37 CFR § 41.37(c)(1)(viii) ; the “Evidence Appendix” as set forth in 37 CFR § 41.37(c)(1)(ix) and the “Related Proceedings Appendix,” as set forth in 37 CFR § 41.37(c)(1)(x) ;
- 3) consider the Supplemental Appeal Brief and if the Supplemental Appeal Brief is in compliance, issue and mail a Form PTOL-90 acknowledging receipt and consideration of the Supplemental Brief;
- 4) issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, heading (8) of the Examiner’s Answer;
- 5) consideration of the Information Disclosure Statements filed September 30, 2002 and July 10, 2006; and

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6) for such further action as may be appropriate .

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571) 272-9797

PJN/gjh

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